(16)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

SINGLE BENCH

WRIT PETITION NO. 2105 /2005

PETITIONER : Ram Sagar Sahu, S/o Shri Sahini Sahu, aged about 22 years, Occupation-Service presently working as Secretary, Gram Panchayat, Amlipali "aa", Tahsil-Sarangarh, District Raigarh (C.G.)

-VERSUS-

RESPONDENTS :

1. State of Chhattisgarh through the Secretary, Panchayat & Social Welfare Department, Mantralaya, D.K.S.Bhavan, Raipur (C.G.)

2. Deputy Director, Panchayat & Social Welfare, District Raigarh (C.G.)

3. Chief Executive Officer, Janpad Panchayat, Sarangarh, District Raigarh (C.G.)

4. Gram Panchayat Amlipali "Aa" through its Sarpanch, Amlipali, Tahsil-Sarangarh, District Raigarh (C.G.)

5. Sarpanch, Gram Panchayat Amlipali 'Aa;, Tahsil-Sarangarh, District Raigarh (C.G.)

6. Shri Sukrit Lal Sahu, Assistant Gram Panchayat Officer, Gram Panchayat Amlipali 'Aa', Tahsil-Sarangarh, District Raigarh (C.G.)

P.R. No. 2274/05 Presented by Shri Ramesh Verma dated 12-5-05

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WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION

संभाग आयुक्त, बिलासपुर 3950/05 राज्य आदर्श कॉलिज बिलासपुर तहसील 16/5/05

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2105 of 2005

Petitioner Ram Sagar Sahu

Versus

Respondents State of Chhattisgarh and others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Present: Mr. I.S. Sahu, Advocate for the petitioner.
Mr. Satish Gupta, Dy Govt. Advocate for the respondents No. 1 and 2.
Mr. Sadeep Dubey, Advocate for the respondents No. 3, 4 & 5.

ORDER
(Passed on 19th Day of February, 2007)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. It is admitted facts of the case that the petitioner was appointed as Panchayat Karmi (Secretary) vide order 25-10-2004 (Annexure P-1) passed by Smt. Binda Bai, Sarpanch, Gram Panchayat Amlipari (Aa), Janpad Panchayat Sarangarh, District Raigarh, who happens to be relative of petitioner, according to the petitioner, the step mother of the petitioner. The petitioner was served a show cause notice dated 9-4-2005, wherein the petitioner declined to receive in presence of two persons. The second show cause notice dated 11-4-2005 was also issued, wherein the petitioner declined to receive in presence of four persons (R-4-5/2).

2. The specific query in the show cause notice was asto whether the petitioner was appointed in accordance with Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993.

3. Learned counsel appearing for the petitioner submits that appropriate reply was filed, after the resolution dated 11.4.2005 was passed. The Gram Panchayat by its resolution dated 11.4.2005 (R-4-5/3) held that the appointment of the petitioner on the post of Panchayat Karmi (Secretary) was not in accordance with the scheme. The petitioner being relative of the then Sarpanch Smt. Binda Bai was appointed dehors the rules, as framed, consequently, the impugned order dated 20-4-2005 (Annexure P-8) was passed. Panchayat Karmi scheme framed in exercise of its powers under Section 17 (1) read with under Section 69 of the Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 was framed by the State Government. Clause 4 of the scheme provides that for appointment on the post of Panchayat Karmi (Secretary), there should be open invitation from all eligible candidates and the said notice be pasted in the office of Gram Panchayats, Janpad Panchayats and Tahsil. The candidates were granted 15 days time to make an application. This appointment was made dehors the scheme as no publication of notice was caused and no similarly situated candidates were invited to make application. It appears that the appointment of the petitioner was made out of

love and affection shown by Smt. Binda Bai, the then Sarpanch, who happens to be step mother of the petitioner.

4. It is well settled principle of law that the appointment made dehors the Constitutional scheme of employment i.e. open invitation to all similarly situated candidates and proper selection and further not in accordance with law does not confer any right on the employee. The petitioner's appointment is dehors the Panchayat Karmi scheme and the Constitutional scheme of the appointment. Thus, the petitioner has no right to the above post.

5. Secondly, the petitioner was given sufficient opportunity of hearing before the Gram Panchayat took a decision of dated 11-4-2005 to remove the petitioner from the post of Panchayat Karmi (Secretary) on the ground of being illegal appointment. The petitioner has not availed the said opportunity by putting forwarded his case before the Panchayat.

6. The Hon'ble Supreme Court in the case of Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and others {(2004) 1 SCC 281} has observed in para 7, as under:-

> "7..... Ample opportunity was granted to the appellant to place his case. He did not choose to do so. It is only a person who is ready and willing to avail of the opportunity given, who can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated

opportunities given and indulgence shown exhibited defiance and total indifference to extending cooperation....."

7. In another case of D. Vinod Shivappa Vs. Nanda Belliappa {JT 2006 (II) SC 187}, the Hon'ble Supreme Court after considering the question of service of notice under Clause (c) of the proviso to Section 130-A of the Negotiable Instruments Act, 1881 held in paragraphs 14 and 21, as under:-

"14. If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed....."

"21..... It is no doubt true that the receipt of the notice has to be proved, but as held by this Court consistently, refusal of notice amounts to service of notice....."

8. Looking from all angles, the removal of the petitioner by impugned order dated 20-4-2005 (Annexure P-8) is just and proper and does not call for any interference by the High Court in exercise of its power of judicial review of the administrative order.

9. Thus, the writ petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Subhash